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SUBJECT: MILITARY JUSTICE TAKES FIRST STEPS TOWARDS REFORM

REF: BOGOTA 0839

1. Summary: Director of Military Justice Brigadier General Puentes has proposed a two-phase reform strategy to present to Congress in March and July of this year. While the plan does not establish an independent body outside of the Ministry of Defense, it does attempt to overcome recurring complaints of military impunity and prevent a collapse of the system from service misbehavior hearings. Specifically, the plan calls for: (a) the establishment of an administrative process for service-related misdemeanors; (b) the conversion of military justice procedures to a purely accusatorial system; and (c) the creation of a military criminal investigative corps. Puentes has chosen to shelve a constitutional change that would give the military justice system jurisdiction over all cases involving the Armed Forces acting in operations. The change could spark controversy when and if it is presented. End summary.

2. Over the last month, Director of Military Penal Justice Brigadier General Jairo Puentes and his team have developed a detailed plan to reform the military justice system. Puentes' document outlines 30 day, 60 day, and 90 day goals to reduce case backlog and present a legislative reform proposal to Congress. Unlike previous plans, it assigns deadlines and specific responsibilities to offices. Emboffs told Puentes that his plan was an important first step in improving the military justice system, but cautioned that critics would be quick to find fault if reform did not produce noticeable improvements soon.

3. At the recommendation of independent Colombian legal advisors, Puentes said he planned to present a few reforms in March, but would postpone the introduction of "phase two" reforms until the July congressional session. His plan would: (a) establish an administrative procedure for addressing routine military misdemeanors; (b) reform the laws governing the military justice system to return it to a purely accusatorial system; and (c) create a military criminal investigative body. Puentes commented that reforms presented in March would "test the waters" with Congress and prompt opponents to present their arguments before the more important, phase two reforms were made public. He added that the more involved changes would probably take a full session of Congress to debate, therefore he wanted to present his plans in July, when Congress begins the new session.

4. The major reform proposed for March would establish an administrative procedure to handle cases of routine service crimes. The current military penal justice code requires all crimes go through a fact-finding hearing and a trial in an appellate body. Puentes hopes that a "fast track" for victimless service misdemeanors will allow the system to focus its resources on more important criminal cases.

5. "Phase two" reforms proposed for July would return the military justice system to a purely accusatorial one and create an investigative body. If approved by Congress, the changes would allow the military justice system to process cases more quickly than is possible with current written procedures. The creation of an independent military investigative body would likewise help judges process evidence more effectively. Military Justice does not have an independent lab or investigative branch, so individual judges have to collect evidence or request assistance from the Fiscalía's criminal lab, which has routinely been refused for crime scenes in conflict areas. A criminal lab with mobile kits would eliminate the uncertainty of evidence processing and reduce the frequency of crime scene tampering.

6. Puentes said the phase two reforms were more critical than the March changes, so he planned to give them a greater chance of success by allowing more time for discussion and debate. He told Emboffs that he believed NGO activists and leftist politicians would be reluctant to accept any of the changes as proposed. He alleged that the military had been the victim of NGO hostility in 2000, when the military justice system was switched to an inquisitorial procedure without administrative hearings, and pledged that the military would have a better plan this time to counter their efforts.

7. A plan that Puentes shelved indefinitely earlier this month proposed an amendment to Article 221 of the

Constitution. He told Emboffs that the amendment was controversial and could endanger the other reform draft legislation. As drafted, the constitutional amendment would specify that the Military Penal Justice System would review all members of the military and police charged with wrongdoing while participating in an official operation. Puentes stressed the importance of legal clarity for members of the Colombian military and police, given the increased tempo of military operations against the Revolutionary Armed Forces of Colombia (FARC). He argued that every operation carried with it the risk of accusations of mistakes or criminal behavior, and stressed that the law had to offer some protection to members of the Armed Forces. Puentes remarked that the change would also limit the frequency of jurisdictional disputes with the Prosecutor General's Office (Fiscalia). An unofficial translation of the proposed amendment follows:

PROPOSED REFORM TEXT: "Courts martial or military tribunals will hear cases of crimes committed by active duty members of the public forces that are related to, occur because of, or under the circumstances of military or police operations, consistent with the prescriptions of the military penal code. Such courts or tribunals will be made up of active duty or retired members of the public forces."

ORIGINAL TEXT: "Courts martial or military tribunals will hear cases of service-related crimes committed by active duty members of the public forces, consistent with the prescriptions of the military penal code. Such courts or tribunals will be made up of active duty or retired members of the public forces."

Note: "Public forces" in Colombia include police forces as well as all military branches. End note.

18. Comment: Most of Puentes' proposals are positive and would move the military justice system in the right direction. However, his proposal for a constitutional amendment, which he is putting on hold, could potentially expand the military's legal jurisdiction over human rights cases by mandating that it cover all crimes "caused by or under the circumstances of" military operations. As the law now stands, military courts can only hear cases of "service-related" crimes, and the Constitutional Court has ruled that human rights crimes cannot be considered service-related. We will continue to press the Ministry of Defense and Puentes to create a system that delivers credible findings to ensure expeditious justice for both the innocent and the guilty. End comment.  
DRUCKER